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December 28, 2011

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SURFACE
TRANSPORTATION BOARD

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Re: Docket No. FD 35331, Sierra Northern Railway--Lease and Operation
Exemption--Union Pacific Railroad Company

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Petition to Revoke the Notice of Exemption of Sierra Northern Railway.

Sierra Northern Railway perceives of no need for discovery in this proceeding and has not served Union Pacific Railroad Company with any interrogatories, document production requests or requests for admission.

Information relating to the payment of the \$250 filing fee was facsimile transmitted to the Board earlier today.

I certify that I this day served copies of this letter on Union Pacific Railroad Company by e-mailing a copy to its counsel, Mack H. Shumate, Esq., at mackshumate@UP.com and on Santa Cruz Regional Transportation Commission by e-mailing a copy to its counsel, Eric M. Hocky, Esq., at ehocky@thorpreed.com.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

cc: Mack H. Shumate, Esq.
Eric M. Hocky, Esq.

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Docket No. FD 35331

**SIERRA NORTHERN RAILWAY
-- LEASE AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**PETITION TO REVOKE THE NOTICE OF EXEMPTION
OF
SIERRA NORTHERN RAILWAY**

EXPEDITED ACTION IS URGENTLY REQUESTED

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Tel.: (202) 263-4152**

**Attorneys for
SIERRA NORTHERN RAILWAY**

Dated: December 28, 2011

SURFACE TRANSPORTATION BOARD

Docket No. FD 35331

**SIERRA NORTHERN RAILWAY
-- LEASE AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**PETITION TO REVOKE THE NOTICE OF EXEMPTION
OF
SIERRA NORTHERN RAILWAY**

EXPEDITED ACTION IS URGENTLY REQUESTED

Petitioner, Sierra Northern Railway of Woodland, Calif. ("SERA"), pursuant to 49 U.S.C. §10502(d) and 49 C.F.R. §1121.1, et seq., respectfully requests the Board to revoke the exemption sought and obtained by SERA by its Verified Notice of Exemption, filed December 1, 2009, and as grounds therefor states, as follows:

1. By its Verified Notice of Exemption, SERA requested and received the Board's authorization to lease and operate, pursuant to a Lease Agreement between it and the Union Pacific Railroad Company ("UP"), UP's 31-mile Santa Cruz Branch and incidental trackage rights ("Line"). See, the Board's Decision in the present proceeding, served December 17, 2009. 74 Fed. Reg. 67006, December 17, 2009.

2. The Santa Cruz Branch extends along the Pacific Coast between Watsonville and Davenport in Santa Cruz County, Calif. The Line has few shippers and generates relatively little freight traffic. It was well known within the industry that UP was

exploring alternatives to abandoning the Line. In 2009 UP contacted a number of short line railroads in California to learn whether they would be interested in leasing and operating the Line. SERA was among those that UP approached, and SERA responded that it would welcome discussing with UP taking over operation of the Line.

3. In the Verified Statement of Mr. Mike Hart, President of Sierra Railroad Company, the non-carrier corporate parent of SERA, Attachment A, Mr. Hart relates that he held conversations with UP's short line representative to negotiate the terms and conditions for SERA's acquisition by lease and operation of the Line. Mr. Hart knew enough about the Line to realize that it couldn't be operated profitably on the revenue derived from its freight business alone. UP's short line representative never suggested the contrary. Nevertheless, the lease which UP had proposed for SERA's agreement would have limited SERA's earnings to be derived solely from its freight operations on the Line but it would have required SERA to perform all of the maintenance and repairs on what is a difficult coast-hugging railroad line.

4. Mr. Hart and UP's short line representative accordingly talked about whether UP would sweeten the pot to make it worthwhile for SERA to lease and operate the Line. Mr. Hart said that SERA suggested that it would be willing to take over operation of the Line if UP were to lease its track to SERA and assign to SERA UP's switching operations in West Sacramento. The income from performing the switching operations at West Sacramento thus would be a means of offsetting the losses that SERA anticipated it would sustain in operating the Line. In the conversations he had with UP's short line representative, Mr. Hart maintains that SERA was led to believe that there was no reason this could not be done.

5. It was on that basis that SERA agreed to try to operate the Line for a year's time, and, accordingly, SERA and UP entered into a Lease Agreement with a December 31, 2010, expiration date. SERA filed its Notice of Exemption on December 1, 2009, and the Board granted its authorization by its Decision, served December 17, 2009. 74 Fed. Reg. 67006, December 17, 2009.

6. Shortly before the December 10, 2010 expiration date of the Lease Agreement, UP asked SERA for a one-year's extension, and, notwithstanding that nothing had transpired in the prior year, SERA continued to believe that UP was working with it for the switching at West Sacramento to be taken over by SERA including unit trains operated to the Port of West Sacramento, and SERA therefore agreed to the one-year extension to December 31, 2011.

7. Mr. Hart expresses his disappointment that UP failed to follow through on its assurances that SERA could take over the switching operations at West Sacramento and that unit trains would be operated to the Port of West Sacramento. He maintains moreover that UP has unfairly manipulated its rates on traffic to the Port of Stockton (50 miles further by rail) to undercut Sierra's business at West Sacramento, thereby further preventing SERA from gaining the earnings required to offset its losses in operating the Line. At the same time UP asked SERA to make extensive and expensive track repairs and track additions in West Sacramento to the Port of West Sacramento trackage on which UP operates thereby increasing the capacity of the Port of West Sacramento to handle unit trains.

8. In his Verified Statement, Attachment B, SERA's President and Treasurer, Mr. David Magaw, declares that SERA invested more than \$1 million in the rail

improvements at West Sacramento which UP had requested SERA to make presumably so that the track to the Port of West Sacramento would have the increased capacity to enable SERA to be able efficiently and expeditiously to accept and handle the unit trains which UP said it would deliver and interchange to SERA at West Sacramento.

9. As it turned out, Mr. Hart says, all of UP's promises were empty. It offered nothing in the way of aid to SERA in operating the Line. Mr. Hart notes that UP instead continued negotiating with the Santa Cruz County Regional Transportation Commission for the sale of the physical assets of the Line for \$14.2 million, which, upon consummation, would leave SERA stuck with the burden of maintaining and repairing the Line, as well as operating it.

10. In 2011, Mr. Magaw points out in his Verified Statement, SERA suffered significant losses on its maintenance and operation of the Line. It incurred approximately \$500,000 in maintenance and operating costs in operating the Line, while generating only about \$136,000 in gross revenues. Mr. Hart in his Verified Statement points out that SERA can ill afford to continue to sustain such losses.

11. Mr. Hart observes that the substantial funds expended by SERA in maintaining and repairing the line was necessitated by long deferred maintenance by UP and its predecessors. All SERA had wanted in agreeing to operate the Line but never achieved was for UP to be a good partner.

12. Under the circumstances, SERA sees no other practical alternative but to ask the Board to revoke the notice of exemption in the present proceeding, effective December 31, 2011. In doing so SERA insists that this is not a case in which the Board is being asked to undo an exemption because it has become expedient or convenient for

the parties seek such relief, as in Docket No. 35133, Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway--Acquisition and Operation Exemption--Line Owned by Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway, served June 16, 2010. Rather, it is a situation in which the Board had been advised of only a part of the premise for SERA's seeking the exemption, and the assurances of UP which had led SERA to ask for the Board's authority to lease and operate the Line were not a part of the record and regrettably in the meantime have proved to be worthless.

13. Clearly, regulation of the transaction whereby SERA leased UP's Line would carry out the transportation policy of 49 U.S.C. §10101. It would promote a safe and efficient rail transportation system by allowing SERA to earn adequate revenues. It would ensure the development and continuation of a sound rail transportation system by enabling SERA effectively to compete with rail and motor carriers. It would foster sound economic conditions in transportation by enabling SERA to coordinate operations with other rail carriers and carriers of other modes. It would encourage honest and efficient management of SERA. It would encourage SERA to pay fair wages and to provide safe and suitable working conditions for its employees. And most certainly it would reduce regulatory barriers for SERA to exit from the Line.

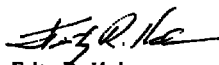
WHEREFORE, Sierra Northern Railway requests the Board to revoke the notice of exemption granted in the present proceeding.

Respectfully submitted,

SIERRA NORTHER RAILWAY

By its attorneys,

Torgny R. Nilsson
General Counsel
Sierra Railroad Company
221 1st Street
Davis, CA 95616
Tel.: (530) 759-9827


Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: December 28, 2011

CERTIFICATE OF SERVICE

I certify I this day served the foregoing Petition to Revoke the Notice of Exemption upon Union Pacific Railroad Company and Santa Cruz Regional Transportation Commission by e-mailing copies to their counsel Mack H. Shumate, Esq. at mackshumate@UP.com and Eric M. Hocky, Esq. at ehocky@thorpreed.com.

Dated at Washington, DC, this 28th day of December 2011.



Fritz R. Kahn

ATTACHMENT A

SURFACE TRANSPORTATION BOARD

Docket No. FD 35331

**SIERRA NORTHERN RAILWAY
-- LEASE AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT
OF
MIKE HART**

My name is Mike Hart, and I am the President of Sierra Railroad Company of Davis, Calif. Sierra Railroad Company is the non-carrier which controls the Sierra Northern Railway of Woodland, Calif. ("SERA"), a Class III rail carrier subject to the regulatory jurisdiction of the Board.

I am extremely proud of SERA. It may be a relatively small railroad, rendering freight service over approximately 100 miles of track in five California locations, but it is an effective one, which has been operated and maintained by myself and our present management for well over 15 years. In the Short Line Directory of the Union Pacific Railroad Company ("UP") SERA's management is said to be "experienced in the safe and efficient operation of regional railroads and has a proven record of increasing traffic through improved service and innovative marketing."

UP has a 31-mile line, known as the Santa Cruz Branch line, which extends along the Pacific Coast between Watsonville and Davenport in Santa Cruz County, Calif. ("Line"). The Line has few shippers and generates relatively little freight traffic. UP has been exploring alternatives to abandoning the Line. In 2009 it contacted a number of

short line railroads in California to learn whether they would be interested in leasing and operating the Line. SERA was among those that UP approached, and SERA responded that it would welcome the opportunity of discussing with UP taking over operation of the Line.

I had conversations with UP's short line representative to negotiate the terms and conditions for SERA's acquisition by lease and operation of the Line. I knew enough about the Line to realize that it could not be operated profitably solely on freight business alone. UP's short line representative never suggested the contrary, though under the UP's proposal SERA's revenue would have been limited to freight operations on the Line but SERA would have been required to perform all maintenance and repairs on this difficult railroad line.

We, therefore, talked about whether UP would sweeten the pot to make it worthwhile for SERA to lease and operate the Line. We suggested that we would be willing to take over operation of the Line if UP would assign UP's switching operations in West Sacramento to SERA. The income from performing the switching would be a means of offsetting the losses that SERA would sustain in operating the Line. SERA was led to believe that there was no reason this could not be done.

On that basis, SERA agreed to try to operate the Line for a year's time, and SERA and UP entered into a Lease Agreement with a December 31, 2010, expiration date. SERA filed its Notice of Exemption on December 1, 2009, and the Board granted its authorization by its Decision, served December 17, 2009. 74 Fed. Reg. 67006, December 17, 2009.

Just prior to the expiration of the Lease Agreement on December 31, 2010, UP requests, and SERA agreed to, a one-year extension of the Lease Agreement to December 31, 2011, with SERA again assuming, notwithstanding a year's delay, that UP was working with it for the West Sacramento switching and the operation of unit trains to the Port of West Sacramento. This SERA did on the strength of UP's short line representative's assurances that UP would work with SERA in a fair and reasonable manner and that UP would begin operating unit trains to West Sacramento which SERA would be able to switch.

However, UP failed to follow through on its assurance that SERA could take over the switching operations in West Sacramento. Moreover, UP has unfairly manipulated its rates on traffic to the Port of Stockton (50 miles further by rail) to undercut Sierra's business at the Port of Sacramento, thereby further preventing SERA from earnings to offset its losses in operating the Line, while at the same time requesting that SERA make extensive and expensive track repairs and track additions in West Sacramento to the Port of West Sacramento's trackage to improve track structure which UP operates on and to increase the capacity of the Port of West Sacramento to handle unit trains.

In 2011, SERA invested more than \$1 million in the rail improvements at West Sacramento which UP had requested SERA to make.

As it turned out, all of UP's promises were empty. It offered nothing in the way of aid to SERA in operating the Line. UP, of course, continued negotiating with the Santa Cruz County Regional Transportation Commission to sell it the physical assets of the Line for \$14.2 million, which, upon consummation, would leave SERA solely stuck with the maintenance burden.

In the meantime, in 2011 SERA suffered significant losses on its operation of the Line. It incurred approximately \$500,000 in maintenance and other costs operating the Line, while generating only about \$136,000 in gross operating revenues. SERA can ill afford to continue to sustain such losses.

SERA spent a substantial amount of its funds trying to operate and maintain the Line, including repairing problems (such as a major washout) caused by long-deferred maintenance by UP and its predecessors. All SERA wanted was for UP to be a good partner.

Under the circumstances, I see no other practical alternative than to ask the Board to revoke the exemption in the present proceeding, effective December 31, 2011. Clearly, regulation of the transaction whereby SERA leased UP's Line would carry out the transportation policy of 49 U.S.C. §10101. It would promote a safe and efficient rail transportation system by allowing SERA to earn adequate revenues. It would ensure the development and continuation of a sound rail transportation system by enabling SERA effectively to compete with rail and motor carriers. It would foster sound economic conditions in transportation by enabling SERA to coordinate operations with other rail carriers and carriers of other modes. It would encourage honest and efficient management of SERA. It would encourage SERA to pay fair wages and to provide safe and suitable working conditions for its employees. And most certainly it would reduce regulatory barriers for SERA to exit from the Line.

I, Mike Hart, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

ATTACHMENT B

SURFACE TRANSPORTATION BOARD

Docket No. FD 35331

**SIERRA NORTHERN RAILWAY
-- LEASE AND OPERATION EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT
OF
DAVID MAGAW**

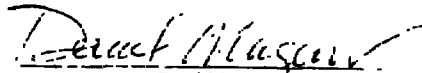
My name is David Magaw, and I am the Vice President and Treasurer of Sierra Railroad Company of Davis, Calif. Sierra Railroad Company is the non-carrier which controls the Sierra Northern Railway of Woodland, Calif. ("SERA"), a Class III rail carrier subject to the regulatory jurisdiction of the Board. I am President and Treasurer of SERA.

SERA's Santa Cruz division is operated by a number of employees and equipment which are dedicated primarily to that Division, but is also strongly supported by my office and staff in Woodland, and by crews and equipment from our other Divisions. I have prepared the following profit and loss statement (attachment no. 1) for the Santa Cruz Division from our accounting books and records. SERA's accounting system and books are maintained in accordance with Generally Accepted Accounting Practices (GAAP) and the attached profit and loss statement is also prepared in accordance with GAAP. SERA incurred a sizable loss from the Santa Cruz Division operations in 2011.

I also prepared a statement of costs and expenses which SERA incurred during calendar year 2011 for track construction and reconstruction in West Sacramento, California to Port trackage. These additions and improvements were made at the request of Union Pacific to have trackage acceptable for Union Pacific to deliver and interchange unit trains to SERA into the Port of West Sacramento, and double the previously existing capacity of the Port of West Sacramento to accept and handle unit trains. SERA has in planning for 2012 additional improvements in West Sacramento to further increase capacity and efficiency to handle unit trains.

I, David Magaw, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed at Woodland, Calif, this 27th day of December 2011.


David Magaw

Sierra Northern Railway
Profit & Loss--Santa Cruz Division
January through December 2011

	Jan - Dec 2011	Through Dec 15
Ordinary Income/Expense		
Income--Santa Cruz Division		
Freight Revenue Santa Cruz	109,579 13	
Other Misc Income	1,500 00	
Railroad Rent Income	28,103 00	
Total Income	137,182 13	Gross Income from operations see Note 1
Expense		
General & Administrative--Santa Cruz Division		
Charitable Contributions	1 000 00	
Office Overhead	2 284 72	
Other G&A Expenses	28,563 99	
Total General & Administrative	31,848 71	
Maintenance of Equipment--Santa Cruz Division		
Locomotives Materials	369 52	
MOW equipment	5,234 22	
Vehicles	7,374 81	
Building & Shop	4,849 27	
Total Maintenance of Equipment	17,627 82	
Maintenance of Way--Santa Cruz Division		
Tools & Equipment Rentals	1,810 67	
Track Material & Supplies		
Track & ROW	17,764 01	
Signals	31,571 95	
Total Track Material & Supplies	49,335 96	
O/S Services - MOW	5,924 00	
Weed Spraying	4,235 74	
Total Maintenance of Way	61,306 37	
Operations--Santa Cruz Division		
Fuel & Oil - SC Division	35,393 07	
Other Operations Expenses	33 12	
Total Operations	35,426 19	
Payroll & Benefits--Santa Cruz Division Employees		
Wages	155 243 79	
Payroll Taxes	30,860 74	
Health Insurance	10,946 52	
Total Payroll & Benefits	196,851 05	
Other Division Employees--Support for Santa Cruz Division		
Payroll & Benefits	71,455 01	
G&A Overhead	16 434 65	
Travel	1 961 40	
Marketing	15,699 68	

Sierra Northern Railway
Profit & Loss—Santa Cruz Division
January through December 2011

	<u>Jan - Dec 2011</u> Through Dec 15
Fuel & Oil - Other personnel	5,000.00
Equipment use	40,125.00
Total Other Division Employee Costs	<u>150,675.74</u>
 Total Expense	 <u>493,735.88</u>

Net Ordinary Income

Notes

1 This does not include tax credit sale income of \$165,132.

While the mileage of the SC branch counts for SNR's total mileage the MOW expense are not qualifying because it was acquired after 2005
SNR has sufficient other MOW expense on qualifying trackage to be able to utilize the mileage

Attachment 2 to Docket No. FD 35331

**SIERRA NORTHERN RAILWAY
-- LEASE AND OPERATION
EXEMPTION --
UNION PACIFIC RAILROAD
COMPANY**

**VERIFIED STATEMENT
OF
DAVID MAGAW**

SNR West Sacramento Track improvements/additions for Unit Trains to Port of West Sacramento

	<u>Jan - Dec 2011</u>
Cemex Track Construction	335,957
Port/Cemex Track Construction	310,730
Washington Transfer Reconstruction	501,685
Jefferson Switch Re-alignment	11,654
Total Expense	1,104,027

Figures include actual expense through Dec 15, 2011, and estimated expense for the period of Dec 16 31, 2011

Expenses are

- 1 Labor costs (including taxes and benefits)
- 2 Material costs
- 3 Equipment use costs
- 4 Overhead expense